UNAPPROVED AND SUBJECT TO CHANGE
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

August 3, 2001

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:44 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, Carol Scott and Gordana Swanson were present.

Item #1. Approval of the Minutes of the June 8, 2001 Commission Meeting.

The minutes of the June 8, 2001 Commission meeting were distributed to the Commission and made available to the public. Chairman Getman noted that the minutes were missing a section and would be resubmitted for approval at the next Commission meeting.

Item #2. Public Comment.

Jim Knox, representing California Common Cause, stated that the Commission and staff had worked hard on conflicts of interest, and noted that more hard work needs to be done. He explained that the current energy crisis involves the issue of conflicts of interest, and that entire state agencies have lost sight of their obligation to comply with the conflict of interest of laws. He charged that purchases and contracts for billions of dollars worth of energy are jeopardized because of the possible conflicts of interest.

Mr. Knox urged the FPPC to resolve the issue and restore public confidence in the process. He urged the commission to determine how widespread lack of compliance could occur, and find ways to ensure that it will not happen again.

Mr. Knox asked the Commission to explain the status of the investigation, and asked whether the Commission would consider leading an effort to assess how the situation happened, and what procedures or measures could be taken to prevent a future occurrence.

Enforcement Chief Steve Russo stated that a number of complaints had been received regarding possible statement of economic interest (SEI) violations and/or possible conflict of interest violations related to energy consultants. Staff is reviewing the information, and are in the process of reviewing the entire issue from an enforcement standpoint. He could not discuss any specific details of the work, but assured Mr. Knox that staff was taking the matter very seriously and that the enforcement division would thoroughly review the matter and take appropriate action regarding any violations.

Chairman Getman stated that staff is reviewing procedures for conflict of interest codes and for reviewing the 20,000 SEI's that the FPPC reviews every year, and that the staff will report back to the Commission whether they believe that further work needs to be done.

Item #3. Proposition 34 Regulations: Pre-notice Discussion of Regulatory Action Regarding Sections 85200 ("One-Bank-Account" Rule); Section 85317 (Carry-Over of Contributions.); Proposed Regulations 18520, 18521, 18523, 18523.1, 18525; 18537.1.

Senior Commission Counsel John Wallace introduced this item, noting that there were three basic issues of concern. Staff had received some comment from the public and the resulting minor changes will be reflected when a proposed adoption version of the regulation is presented.

Mr. Wallace explained that the first issue was whether the rule allowing the redesignation of committees and campaign bank accounts should be continued. Under the current rule, candidates can redesignate committees and bank accounts for future elections to the same office as well as election to other offices under limited circumstances. Proposition 34 created a conflict between the concept of redesignation and the concept of transferring funds forward to a redesignated committee. He noted that interested persons supported retaining the redesignation approach, because eliminating it would increase complexity and costs to committees and candidates. Staff believed that a distinct and separate committee for each election aids in enforcement and maintaining compliance of the law, by allowing staff to monitor the funds being raised as well as being spent in the committees. It also allows the public to be better able to attach contributions and expenditures to a specific election. He believed that eliminating the redesignation rule would be consistent with the statutory one-bank-account rule enacted under Proposition 73.

Mr. Wallace noted that, if the Commission decided to retain the redesignation rule, staff would present prenotice language codifying the redesignation rule at a later date.

Mr. Wallace presented the second issue, dealing with regulation 18525 and how it should be dealt with under Proposition 34. Proposition 34 created separate closed systems for every election, and those systems controlled the funds flowing into and out of a specific committee for a specific election. Regulation 18525, under Proposition 34, allows expenditures to be made from a future campaign bank account to pay for expenses associated with a prior election. Staff believed that the regulation should be reevaluated, possibly limited, or possibly made inapplicable to Proposition 34 elections.

Mr. Wallace noted that interested persons commented to staff that the regulation should be retained, and should be applied to Proposition 34 elections. Staff drafted optional language for the Commission's consideration amending regulation 18525, adapting the

regulation to a Proposition 34 context, in case the Commission decides that the regulation should be retained.

The final issue presented by staff, Mr. Wallace explained, dealt with the carryover issue in Government Code § 85317. He noted that the statute allows the transfer of funds forward without attribution to specific contributors, in limited circumstances. Under the Proposition 34 closed system, a broad interpretation of the carryover rule could defeat the purposes of the contribution limits. An incumbent with a large amount of funds not expended could carry them over to a future election, and it could affect the ability of the contribution limits to keep a fair playing field for everyone in that election. Staff proposed two options dealing with this issue. The first would apply the statute only to specific election cycles, and this approach was supported by staff. The second approach, advocated by the authors of the language, would apply the statute to every case where an incumbent is running for reelection to the same elective state office.

Mr. Wallace noted that transfers are permitted under Proposition 34, but whether to require attribution to the contributors of the transferred monies is the issue.

Chairman Getman noted that the Federal rules also allow carryover even though there are contribution limits. She asked Mr. Wallace to clarify when the transfer statute would apply.

Mr. Wallace responded that if § 85317 was interpreted with the broader application, the transfer statute would be expressly inapplicable anytime it involved a reelection to the same state office. He explained that LIFO or FIFO attributions identify contributors of transferred monies and limit what those contributors can contribute to that candidate under Proposition 34. The carryover statute, however, expressly states that the attribution aspect is not applicable and could, therefore, nullify the transfer rules because it would not require attribution to contributors.

Commissioner Scott noted that it would eliminate the attribution rule.

Commissioner Knox agreed with staff's characterization of § 85317.

Mr. Wallace explained that the Commission would need to determine how broadly to interpret that section. Applying the transfer and attribution rules only to primary and general or special and special runoff elections would have a small effect on the closed system of contribution limits. However, if applied for every reelection, it could have a dramatic effect on the limits.

In response to a question, Mr. Wallace explained that a candidate is always able to transfer monies with attribution. However, a candidate with money left over from a primary election campaign account could not transfer it without attribution to the candidate's next primary campaign because it was raised in connection with a previous general election, unless the Commission decides to broadly construe the carryover statute, in which case a candidate could transfer monies from a prior general election

campaign account to a new general election campaign fund without attribution. If the Commission interpreted the statute more narrowly, "carryover" would be defined to mean simply primary election contributions transferred to general elections, or special election contributions could be transferred to special election runoffs without attribution. This would allow the monies to be carried over in the same election cycle. The author's interpretation of the statute was very different than this interpretation, but the author's intent is not controlling.

Chairman Getman observed that the language of § 85317 would seem to allow carryover from one election for elective state office to pay expenditures in connection with a subsequent election for the same elective state office.

Commissioner Knox clarified that the question was whether that language meant within the same election cycle or whether it meant election to the same office for a different term.

In response to a question, Commissioner Knox stated that § 85317 would not apply in cases where a candidate ran for an assembly seat and wanted to carry funds over to a senate seat.

Mr. Wallace agreed, noting that interested persons were not advocating that type of interpretation.

In response to a question, Mr. Wallace stated that, if the Commission should agree with staff's approach on the redesignation issue, it also should consider regulations to reflect that every term of office is a separate election.

Chairman Getman questioned how staff was defining "elective state office," noting that the language of § 85317 refers to "subsequent election for the same elective state office." She explained that proposed regulation 18520 would provide that, "specific office" means a specific term of elective office.

Mr. Wallace agreed, and noted that it would depend on whether the Commission agreed with staff's approach on the redesignation issue.

Commissioner Knox stated that proposed regulation 18520 would be consistent with a broad interpretation of § 85317, which staff was not recommending.

Chairman Getman stated that if Proposition 34 was a contribution limit scheme only it does not matter whether the contributions are carried over because it allows contributions for every election. If, however, Proposition 34 is also an expenditure limit scheme, the carryover provision becomes more problematic.

Mr. Wallace responded that interested persons believed that Proposition 34 was never intended to regulate expenditures.

Chairman Getman noted that the Federal scheme allowed carryover, partly because the Federal scheme does not limit the amount of expenditures that can be made. Proposition 34 does limit expenditures.

Mr. Wallace agreed. He noted that if money is allowed to be moved into the Proposition 34 "closed system," without attributing the monies, it would be distorting that system. He believed that expenditure issues should be treated the same way. He noted that even the authors of Proposition 34 would agree that attribution was the favored way to deal with movement of money between committees. Staff believed that attribution should be the basic rule and suggested a narrow view of the carryover issue.

Chairman Getman questioned why a candidate should be allowed to carryover monies from a primary to a general election.

Mr. Wallace responded that both elections involve getting elected to one office, as opposed to raising funds for a 2010 election and being able to transfer it to the 2014 election for the same office.

Commissioner Knox stated that the statute binds the Commission, even though it creates distortions to the "closed system" created under Proposition 34. The fairest reading of the language of § 85317 seemed to suggest that the carryover from an election in 2000 to an election in 2004, not merely from a primary election to a general election, would be permitted without attribution.

Mr. Knox, from California Common Cause, stated that attribution must be required. He believe that monies should not be carried over, even from the primary to a general election, without attribution. Otherwise, it just creates a mechanism for donors and candidates to avoid the contribution limits. He did not agree that § 85317 allowed carryover without attribution.

Commissioner Knox questioned how Mr. Knox would treat the "Notwithstanding subdivision (a) of Section 85306…" language of § 85317 if it did not rule out the requirement for attribution.

Commissioner Scott asked whether it could be interpreted to mean that this methodology did not have to be used, instead of meaning that there does not have to be attribution.

Commissioner Knox responded that it seemed to rule out application of all of subdivision (a), and pointed out that the concern that the "closed system" would be distorted should consider that using the LIFO and FIFO systems is already a kind of distortion.

Commissioner Scott agreed, but noted that subdivision (b) excludes all attribution, while subdivision(a) refers to the accounting methodology. If the statute read, "Notwithstanding subdivision (b)…," she would agree that it did not have to be attributed.

Commissioner Knox responded that if the "Notwithstanding…" language of § 85317 was not there the Commission would be trying to harmonize the provisions of § 85306, with the attribution provisions, and § 85317. He believed that the § 85317 language was meant to impose no limitations under § 85306 (a).

Commissioner Scott argued that the result of that would be to add subdivision (b) to the "Notwithstanding…" language. Subdivision (b) allows transfers without attribution, while subdivision (a) allows transfers with attribution under the LIFO or FIFO methodology.

Commissioner Knox agreed, noting that subdivision (a) requires attribution, but that the "Notwithstanding…" language of § 85317 should be interpreted to mean that the carryover is allowed without attribution.

Chairman Getman asked whether there was a definition to the word "carryover."

Mr. Wallace responded that "carryover" generally referred to old money being carried over, noting that there was a separate "old money" provision in the transfer section.

Ms. Menchaca did not believe that there was any other provision in the history of the Act that used the word "carryover" in a way that would help.

Scott Hallabrin, from the Assembly Ethics Committee, stated that there could be an issue with the definition of "same elective state office" in terms of legislators representing a district that has been redistricted. He expressed the same concern for legislators who start in the assembly, move to the senate, then go back to the assembly, and he questioned whether those situations would be considered the same office.

In response to a question, Mr. Hallabrin confirmed that term limits still apply in those scenarios.

Commissioner Knox questioned how the rest of the items identified in the staff memo would be affected if the Commission chose to allow the carryover to be transferred without attribution from election cycle to the next election cycle and from a primary election to a general election.

Mr. Wallace responded that redesignation occurs most commonly to the same elective office. Allowing carryover would support the idea that redesignation should also be permitted since the ability to carry over monies without attribution diminishes some of the auditing justifications for prohibiting it.

In response to a question Mr. Wallace stated that if redesignation is permitted § 18525 would continue to be a problem because candidates would be allowed to spend out of one office account to support efforts for another office.

Commissioner Knox questioned whether, if the Commission chose the broader view of § 85317, and also decided to continue to allow redesignation, it would affect any of the other regulations adopted or proposed.

Ms. Menchaca stated that the regulation has to do with Government Code Section 85316, and could affect voluntary expenditure limits. If the Commission chose to allow redesignation, staff would want to include specific reference to specific statutes or regulations so that the committees would have to consult those regulations or statutes to ensure that they are not getting around those statutes by redesignating.

Mr. Wallace added that staff would want to put language together to codify redesignation if the Commission chose to continue to allow it, dealing with issues such as transferring debt.

In response to a question, Chairman Getman explained that a candidate could receive contributions totaling $12,000 from the same individual in some circumstances. One primary election donation and one general election donation for each of two elections could be made to the redesignated committee. This issue would require stringent bookkeeping rules in order to keep track for contribution limit purposes.

Mr. Wallace noted that it could be difficult for Enforcement to track and would also be difficult for the public to follow.

Chairman Getman noted that the Form 460 has been revised to require that contributions be tied to specific elections.

Mr. Wallace noted that Enforcement staff believed that it would be easier to monitor if the committees had separate accounts and committees. He did not believe it to be an insurmountable issue.

Commissioner Knox stated that the money would be arriving during the new election cycle and asked why they would not be subject to the contribution limitations.

Chairman Getman responded that the limits would be in effect for the both elections, but § 85316 would allow fundraising after an election to pay off debt.

Commissioner Knox suggested that if a candidate chooses to redesignate, all contributions to the redesignated committee would be used for the new election and would be subject to contribution limits for the new election.

Chairman Getman did not believe that the Commission had the authority to tell committees that they could not fundraise to pay off the debt.

Commissioner Knox suggested that, by redesignating, a candidate would be acknowledging that they were closing down the old committee and starting the new

committee in debt and would only be able to fundraise up to the contribution limits for the new election campaign.

Ms. Menchaca stated that the notice for § 85316 is structured in a manner that would allow staff to craft a regulation in that manner.

Chairman Getman stated that it would be the easiest termination rule, and questioned whether the purpose language of Proposition 34 would address the issue of whether it intended to address contribution limits only.

Ms. Menchaca responded that there was nothing helpful on these issues.

Chairman Getman noted that the original purpose of Proposition 9 was retained, reducing the power of incumbency. Allowing carryover would give more power to incumbents and would, in that context, be counter to the Proposition 9 purpose.

Mr. Wallace agreed.

Ms. Menchaca noted an amendment to Government Code Section 89510 providing that campaign funds for a committee are to be held in trust for purposes of the contribution limits.

Chairman Getman stated that the voluntary expenditure ceilings of Proposition 34 would indicate that the expenditures should be considered. The more money that is carried over, the more people are encouraged to ignore the voluntary expenditure ceilings because they have more money to spend if they need it.

Commissioner Swanson stated that incumbency advantages should be eliminated as much as possible.

Chairman Getman stated that she was leaning toward supporting staff's recommendation to treat the carryover as just applying to primary and general elections. She concurred with Commissioner Knox's reading of the statute in isolation, but when considered with Proposition 34 and Proposition 9 she believed that limits should be placed on both contributions and expenditures.

Commissioner Knox asked how the carryover provision would be used with monies raised for a general election.

Chairman Getman responded that the provision would not be used.

Commissioner Knox did not agree that § 85317 was meant to be read so that it does not apply to funds raised in connection with a general election.

Chairman Getman responded that the regulations would have to be further studied to identify any additional repercussions if "same elective state office" was defined to mean the same term of an elective state office.

Commissioner Knox pointed out that monies raised for a general election could not be carried over for a subsequent election to the same elective state office under that definition.

Ms. Menchaca noted that proposed regulation 18520 attempts to define "same elective state office" as referring to a specific term of elective office, and fits within the overall scheme if the Commission chooses to allow redesignation. She agreed that the concept would need to be added in the specific regulation.

Chairman Getman motioned that the Commission accept staff's recommendation with regard to the carryover provision, applying it only to carryover funds from the primary to the general election of the same term for an elective state office.

Commissioner Swanson seconded the motion.

Commissioner Scott stated that the Commission should try to find a way to require attribution in all elections. She agreed that the Commission should not give undue help to incumbents, and stated that the statute should be interpreted in light of the entire statute, including the preamble.

Chairman Getman pointed out that it would only help those people who won the primary and are running for the general election. Moving monies from the general election to the next primary election would require attribution.

Commissioner Scott noted that one of the Commission's roles is to affect disclosure, and did not believe that there should be an intermediary step where attribution was not required.

Commissioner Downey stated that § 85317 was referring to an elective state office with a specific term and reelection to that office, essentially "swallowing" the attribution provisions of § 85316.

Commissioner Swanson stated her frustration with the issue, because the statute could not be revised by the Commission.

Mr. Wallace clarified that, while the Commission cannot amend the statute, it does have broad authority to interpret the statute. Staff believed that both options presented in the staff memorandum would be successfully defended if challenged.

Commissioner Scott stated that part of the Commission's role in interpretation is to go back to the findings and declarations and purpose of the Title to reconcile what might seem like inconsistent provisions of a statute.

Chairman Getman clarified that her motion was to interpret § 85317, consistent with the staff recommendation, as applying only to the carryover of contributions from the primary to the general election during the same election cycle, and not to apply § 85317 from one term to another even if it is the same elective state office.

Commissioners Scott, Swanson, Knox and Chairman Getman voted "no." Commissioner Downey abstained. The motion failed by a vote of 0-4 with one abstention.

Mr. Wallace suggested that option 2 of proposed regulation 18537.1 may reflect the broader interpretation that the Commission was moving toward, and could work with some limiting language. If staff were to work with that language, they would also need to bring back the issue of debt.

Commissioner Knox questioned the statutory support for subdivision (b). He believed that subdivision (a) would allow for carryover without attribution provided it involved the same seat (even though it might be different election cycles). Subdivision (b) provides that monies cannot be carried over until the debt from the prior campaign has been distinguished.

Chairman Getman suggested that subparagraph (b) should be included in a separate decision.

Mr. Wallace explained that staff was trying to harmonize this statute with § 85316, the debt statute.

Chairman Getman suggested that Mr. Knox could consider a motion pertaining to subparagraph (a) only.

Ms. Menchaca noted that subdivisions (b) through (d) are intended to harmonize with other provisions of Proposition 34.

Commissioner Knox motioned that the Commission direct staff to prepare a regulation following option 2 subparagraph (a), allowing carryover without attribution to another election providing the candidate is running for the same office, defined in terms of office, not election cycle.

Chairman Getman seconded the motion.

Commissioner Swanson stated that attribution is a difficult issue as presented in Proposition 34. She believed that the voters would want easier access to more information, and that without attribution the voters would not have the information they needed. She asked why the motion was good for the public.

Commissioner Knox responded that allowing carryover without attribution does seem contrary to Proposition 34, but the language of 85317 is so clear that it cannot be

circumscribed by using the overall purpose of the Act. The flaw is not in the intentions or the regulation, he noted, but in the statute.

Ms. Menchaca stated that staff has found it frustrating to work with statutes by trying to draft regulations that further the contribution and expenditure limits. Staff spends more time trying to figure out ways of accomplishing what they think was the public's intent. There are numerous places in Proposition 34 where the language seems to directly contradict other language in Proposition 34. She urged the Commission to allow staff flexibility to try to harmonize the statutes because, while it is important to look at the plain language, the end result of the adopted regulations should not be to render nullified another statute.

Chairman Getman added that the same problem exists with §§ 85316 and 85317.

Commissioner Scott agreed that there should be a way to harmonize the statutes without stretching too far. She suggested that staff explore a better rationale for doing this if the motion passes.

Commissioner Swanson agreed that harmonizing is important, but asked whether the motion will tie staff's hands.

Ms. Menchaca responded that it is linked to all of option 2. She did not believe that passing the motion will preclude staff from working on option 2 subparagraphs (b) through (d), but stated that she would have more guidance as the Commission discusses those items.

Commissioner Downey asked whether the previous motion which was not passed would have provided staff the lattitude they needed to harmonize the statute.

Ms. Menchaca responded that it would not have provided greater latitude, but it would have provided a different interpretation of "subsequent election for the same state office." She noted that option 2 defined carryover, providing the Commission with an opportunity to interpret "carryover," narrowly or broadly.

In response to a question, Commissioner Knox noted that Ms. Menchaca was not offering any further refinement of the term "carryover," and that "carryover" under option 2 subparagraph (a) means being able to transfer funds to a new election cycle for the same seat.

Chairman Getman clarified that subparagraphs (b) through (d) limit when the carryover can be used, and noted that if the Commission passes the motion, the Commission should look very carefully at that proposed language.

Ms. Menchaca added that staff would probably work on language that could read, "Notwithstanding (a), the term carryover does not mean these things…".

Commissioner Knox restated his motion to direct staff to prepare a new regulation 18537.1, implementing Government Code Section 85317, that would be consistent with subparagraph (a) of option 2 of the staff memorandum. He clarified that, if the motion is passed, carryover would not be subject to attribution but could only be used for subsequent terms to the same elective state office. He suggested that Mr. Hallabrin's concerns about reapportionment issues and returning to an office after an accepting another office would need to be addressed.

Commissioner Swanson noted that this would create advantages for incumbents.

Commissioners Scott, Downey, Swanson and Chairman Getman voted "no." Commissioner Knox voted "yes." The motion failed by a vote of 1-4.

Commissioner Scott motioned that staff prepare a method or rationale for reconciling what seems like inconsistent provisions of the statute to permit attribution when money is moved from one place to another, to respond to the concerns that have been expressed.

Chairman Getman noted that proposed subsection (a) discussed attribution and contributions not exceeding the limit and asked how staff could do this without worrying about the limits.

Ms. Menchaca responded that it could be viewed as responding to just part of the statute. She noted that § 85317 refers to the entire subdivision (a) and that it would be harder to do that. She suggested that staff explore the latter part of § 85306(a), and approach § 85317 in a manner that would provide that funds can be raised separately for each election, ignoring the attribution language.

Commissioner Knox asked if she was suggesting that attribution would be required, but that the contribution limits would not apply.

Chairman Getman clarified that, currently, contributions to the prior election would count towards the contribution limits of the current election. Another possibility would be to require attribution, and allow contributors to donate to the current election even if their donation to the prior election was carried over to the current election.

Commissioner Knox stated that it might be an acceptable alternative.

Chairman Getman clarified that staff would try to harmonize in a way that has attribution but focuses on the second section, consistent with Commissioner Scott's motion.

There being no objection, the motion carried.

The Commission adjourned for a break at 11:05 a.m.

The Commission reconvened at 11:17 a.m.

Decision Point 1 - Redesignation

Mr. Wallace explained that, under Proposition 73, staff has advised that, since transfer of a candidate's campaign funds between his or her own committees was permitted, redesignation should be allowed for reelection to the next term of office. Proposition 34, requiring the "per election" scheme is not consistent with the prior advice. Staff proposed prohibiting redesignation, requiring the opening of a new committee and a new bank account for each term of office.

In response to questions, Mr. Wallace stated that staff could not identify any specific problem areas because the law is so new. He agreed that redesignation is not expressly allowed or prohibited under the statute. He explained that interested persons believed that it would be more difficult to have separate committees, and Franchise Tax Board representatives suggested that the benefits of requiring separate committees might be overcome by the burdens involved in it. FPPC Enforcement Division, however, believed that the separate committees would set up better audit trails for purposes of tracking the limits, and would be easier for the public to follow.

In response to a question, Mr. Wallace stated that, for committees that do not have debt, if carryover is allowed, redesignation might be appropriate.

Commissioner Downey suggested that the Commission could help Enforcement Division and accommodate the regulated community by requiring, upon redesignation, such things as terminating the preceding committee and a means of tracking funds.

Technical Assistance Division Chief Carla Wardlow stated that currently redesignation occurs through an amendment to the statement of organization. This can happen in the middle of a reporting cycle. The committee has not been required to do dual bookkeeping to track the monies for the different elections, because there was no need to.

Chairman Getman suggested that redesignation might be required at the beginning or end of a reporting cycle because expenditures and contributions will need to be tracked for purposes of following the voluntary expenditure and contribution limits.

Ms. Wardlow responded that the Forms currently have no place to identify when the committee has been redesignated, unless the committee's name is changed.

Chairman Getman suggested that it could be built in by requiring that the name of the committee be changed upon redesignation.

Ms. Wardlow suggested that a separate summary page could be used for the new election. She did not know how that would work with electronic filing. She noted that there are already committees that have been redesignated for the next election.

Mr. Wallace noted that a "grandfather rule" would have to be provided allowing those committees to retain their new status. He suggested that, since the Commission seemed

to be leaning toward keeping redesignation, staff should return to the Commission with a codification of the redesignation rule with limitations such as special reporting, different types of summary pages, and possible limitations to accommodate electronic filing .

Ms. Menchaca noted that whether or not a committee had debt could be a consideration.

Commissioner Knox asked where the statute supports such a limitation.

Mr. Wallace responded that there was not opposition from interested persons to prohibiting redesignation when there was debt, noting that committees with debt have separate rules for how their monies can be spent or raised.

Commissioner Knox asked whether staff was considering proposals under which committees finishing an election with debt would not be able to redesignate, but would have to start a new committee for a subsequent election.

Mr. Wallace responded that they would have to form a new committee, allowing better tracking of the dual purposes. To the best of his recollection, the regulated community was concerned about losing redesignation generally, but was not opposed to prohibiting redesignation when there were debts. He suggested that there may be more public feedback by the next Commission meeting.

Chairman Getman was concerned about how redesignating with debt would harmonize with § 85307, which limits the amount of outstanding loans a committee can have at any time. If § 85307 includes personal loans, regardless of what election the loan was for, it might argue in favor of allowing committees to redesignate with the debt. It would be important to keep track of the personal loan on an ongoing basis, making sure that the committee does not acquire more debt than allowed under that section.

Chairman Getman also noted that the federal system allows transferring a debt to another committee in order to facilitate termination of an old committee. This encourages the candidate to assume the debts in the current committee and continue to try to resolve them. She believed that the way the termination, debt settlement, and personal loan issues are dealt with by the Commission will help determine how the issue of transferring debts should be handled.

Commissioner Downey noted that if committees can be redesignated, committees would not have to close old bank accounts and open new ones, or file a new statement of organization, and they would not need to get a new tax identification number.

Chairman Getman added that they would not have to pay vendors twice to file electronic reports, which are a big expense.

Commissioner Scott asked whether that issue could be resolved administratively, so that the additional costs would not be an issue.

Mr. Wallace did not know whether that was an issue the agency could control, and noted that he would have to contact the Secretary of State's office to find out if there was anything that could be done.

Chairman Getman pointed out that electronic filing can only be accomplished by using an approved vendor, and that vendors charge by committee.

Commissioner Scott suggested that staff look into this issue.

Commissioner Knox stated that redesignation would require that the committee keep two separate accounts. One account would relate to expenses, and the other would relate to the next election. He clarified that the dual accounting is problematical for the enforcement division.

Mr. Wallace responded that there was also the concern that the public would have difficulty deciphering the books.

Mr. Russo explained that the enforcement problem is in identifying monies collected and disbursed. One way to handle it would be to have a separate account for each committee, making it easy for enforcement staff to see which committee the money pertains to. If there are not separate accounts, the only way to identify which committee the money is used for is by the record-keeping that the committee makes. He did not believe that the record-keeping would always be done correctly. In that case, enforcement staff could only charge the committee with a record-keeping violation, when in fact the committee may be trying to get around contribution or expenditure limits. A simple system would help enforcement to properly identify violations.

Decision Point 2

Chairman Getman noted that officeholder expenses are often difficult to identify in terms of whether an expense was for a campaign or whether it was a "mixed purpose" expense. She noted that a former general counsel of the FPPC stated that the Commission did not come up with a system requiring that the committees identify very specifically which election the expenses relate to, out of concern that it would create an enforcement nightmare. She believed that this was an important issue that should be considered.

Mr. Wallace responded that, with redesignation, expenditures would be made out of the correct account (even though there might be limited overlap with carryover money or debt). Regulation 18525, under Proposition 73, listed specifically those activities that were clearly for a campaign, require that expenditures for those activities come out of the future campaign account, and then consider all other expenses to be for "mixed purpose," allowing them to be paid from either account. Staff presented the regulation for the Commission's review to determine whether they want to revise it to fit Proposition 34 or determine that it does not apply to Proposition 34 elections. If the Commission chose not to apply it to the Proposition 34 elections, expenditures would have to come out of the specific account and the Commission would have to set up guidelines to determine what

is considered a current office holder expenditure versus what is considered a future campaign expenditure. Mr. Wallace explained that identifying the categories might be difficult.

Chairman Getman stated that identifying the expenditure for enforcement purposes was a strong argument for allowing redesignation, because it would encourage people to turn the committees over to a future election and make all expenditures out of that committee.

Mr. Wallace presented an alternative to modify Regulation 18525 to fit Proposition 34 elections. He explained that proposed Regulation 18525 Option 2 added new language to deal with elections under Proposition 34, in subdivisions (c) and (d). Subdivision (c) would deal with elections occurring after January 1, 2001, and would incorporate them to the debt limitations of § 85316. Even in this context, he noted, committees would have to pay their debts first, and then the funds could be used consistent with § 18525 as written. Subdivision (d) would apply to old committees, allowing funds to be used for officeholder expenses.

Chairman Getman stated that subdivision (d) made sense to her, and subdivision (c) was consistent with how the Commission was viewing the net debt, but she noted that it did not answer the question of the mixed expenses.

Mr. Wallace explained that those proposed subdivisions were an attempt to allow that monies can be used for anything but the future campaign expenses set out in subdivision (a). Subdivision (b) is the "mixed purpose" expenditure provision, and subdivision (a) describes the election expenditures that have to come out of the future campaign account. Subdivisions (c) and (d) were intended to allow funds to be used for any type of officeholder expenses after the election has occurred, but not for future campaign expenditures, consistent with § 18525.

Ms. Menchaca added that staff recommended adding subdivision (a)(5) in order to refer to the voluntary expenditure limits so that it would be a campaign expense that would have to come out of the particular account established for that election.

In response to a question, Mr. Wallace stated that § 18525 would still be needed if redesignation is allowed, because it would be needed for local elections. It would also be needed because officials may have officeholder expenses for a prior term of office, and would like to be able to use the future campaign funds in the redesignated account for those expenditures, and subdivision (b) would allow that.

Ms. Wardlow noted that redesignation would be voluntary and some candidates will choose not to redesignate.

Commissioner Scott suggested that the word "shall" be changed to "may" in proposed § 18525(a) because the official may not have to make those expenditures.

Mr. Wallace explained that when the Commission wanted to split up the nature of the expenditures, they determined that those expenditures could only paid out of the future campaign account.

After further discussion, Mr. Wallace agreed that the language should be clarified.

Chairman Getman presented a hypothetical mass mailing scenario wherein an incumbent sent a mailer describing the official's position on a current budget issue, and asked for clarification of why the expense would be considered a future election expense.

Ms. Menchaca responded that the language in subdivision (a) addressing the issue should be revisited because the "3 month" language may not be supported by staff.

Mr. Wallace pointed out that the Commission adopted that language in order to set up a "bright line" rule. He cautioned that the regulation should not be amended too much because it has been used in local elections for quite a while and the local officials were familiar with it. He added that staff could come back with clarifying changes.

Mr. Wallace stated that staff recommended that separate accounts and committees be used and that redesignation not be allowed.

Chairman Getman stated that she was not persuaded that redesignation needed to be eliminated under Proposition 34.

Commissioner Knox was inclined to leave redesignation as an option for campaign committees, recognizing that it involved placing some impediments in enforcement investigations, because it would involve additional costs to the regulated community.

Commissioner Downey disagreed with Commissioner Knox, noting that the Commission owes allegiance to the staff recommendations. He believed that it would help enforcement efforts, and did not see the additional expenses and inconveniences that would be borne by the committees as insurmountable. He supported adopting the policy of Proposition 34, which was to compartmentalize the elections and to have separate committees for those election's candidates.

Commissioners Scott and Swanson agreed with Commissioner Downey.

Chairman Getman suggested that the staff prepare a proposal to eliminate redesignation.

Commissioner Downey clarified that he was not yet convinced that redesignation had to be eliminated.

Ms. Menchaca noted that the Commission had directed staff to allow redesignation with some limitations, and asked whether the Commission wanted to see two different versions. She suggested one version with limitations, and another option not allowing redesignation or requiring separate committees.

Chairman Getman responded that staff should at least prepare language without redesignation as an option, and suggested that they also prepare an option allowing redesignation with limits.

Mr. Wallace stated that § 18525 will also need to be brought back for a decision, dealing with specifying which accounts expenditures would have to be made from. The Commission will need to decide whether it should apply to Proposition 34 elections.

Chairman Getman noted that if the Commission chose to have separate committees, § 18525 would not be needed.

Mr. Wallace responded that it will still be needed in order to coordinate the expenditures out of two different committees.

Chairman Getman agreed that § 18525 should be brought back with a clear understanding of how it applies in the two redesignation options. She clarified that the Commission is leaning toward requiring separate committees, but might approve redesignation with more limits that it has now.

Chairman Getman asked whether staff's recommendation that contributions to other candidates would be considered an election expense out of a future campaign committee has received any attention from interested persons.

Mr. Wallace responded that the language was inserted as a point of discussion for the Commission and no decision had been made on that. There had been no public comment on it.

Commissioner Swanson suggested that Legal Division staff coordinate with Enforcement Division staff while working on the redesignation issue.

Chairman Getman noted that debt carryover could go to the new committee, or the redesignated committee, or that redesignation could only be allowed without debt. Therefore, that issue will also need to be brought back to the Commission.

The Commission adjourned for a lunch break and closed session meeting at 12:00 p.m.

The Commission reconvened at 1:30 p.m.

Item #4. Proposition 34 Regulations: Termination of Committees – Pre-Notice Discussion of Proposed of Regulation 18404.1.

Commission Counsel Holly Armstrong presented a supplemental memorandum to the staff memorandum, outlining federal termination procedures.

Ms. Armstrong reported that staff held an interested persons meeting to discuss requiring that committees be terminated, and the feedback staff received at that meeting has been considered in the draft regulation.

Ms. Armstrong explained that there is currently no deadline for the termination of committees and that termination of committees is completely voluntary. The Commission has the authority to regulate termination under Government Code § 84214.

Decisions 1 and 2.

Staff presented draft regulation 18404.1(a) and (b) providing for committee termination delineated for pre-2001 committees and post-2001 committees. The concept was to first eliminate committees operating under pre-Proposition 34 rules, and create a structure under which committees regulated by Proposition 34 would have a natural life span.

Chairman Getman noted that there did not seem to be any objection from the public to closing out the pre-Proposition 34 committees.

In response to a question, Ms. Wardlow explained that "committee" is a definitional term in the PRA that sets up the filing scheme. Committees that receive contributions are required to have a treasurer, but she did not know why the statute was set up that way. When a committee is terminated, it verifies that it has no money. It can no longer raise or spend money, and has filed all required reports.

Ms. Armstrong explained that the proposed regulation requires that committees file termination papers by a certain date. Staff has not yet worked out enforcement issues because of technical difficulties with documents.

Chairman Getman clarified that staff does not have a list of all open committees, nor does the Secretary of State. The first step to dealing with enforcement would be a complex task of compiling a list of open committees. Those committees will then need to be noticed of the new termination requirement. Staff will then follow-up to make sure that those committees are terminated. At that point, a new system will be keeping track of current open committees, and staff would keep records of committees.

David Hulse, from the Secretary of State's (SOS) office, clarified that the SOS would have the ability to generate a list of all state committees, not just electronic filers, in a very short time, identifying both active and terminated committees. Committees that are open but have no activity may have been administratively terminated, but most will have a record.

Ms. Wardlow stated that the difficulty will be in weeding out from the list those committees for candidates running for elective state office.

Mr. Hulse noted that the list makes a distinction between state and local committees.

In response to a question, Ms. Armstrong stated that this regulation is not specific to Proposition 34. Staff suggested that local candidate committees be exempted from this rule because it might be difficult to convey the new rule to everyone who is advising candidates of their filing requirements. She pointed out that separate rules for local and state candidates make enforcement more complex, but noted that enforcement staff did not oppose having the regulation not apply to local committees.

Commissioner Swanson was concerned about exempting local committees from the regulation. She noted that this would affect local boards of supervisors and local judicial offices, whose jobs are more complex and involve larger jurisdictions than some assembly member offices.

Ms. Armstrong pointed out that Proposition 34 does not apply to local committees and so the two-tiered system is already built in.

Chairman Getman explained that one advantage to exempting local committees was to "phase-in" termination, and that the Commission could revisit the issue in a year or two to consider whether the termination requirement could be expanded to include local committees.

In response to a question, Ms. Armstrong stated that committees which have not been terminated and have outstanding debt can continue to raise money, and that the Commission had directed staff to explore terminating. Conversly, she questioned what purpose the committee served if it had fulfilled its purpose of getting the candidate elected and through the term of office.

Chairman Getman noted that there are a lot of committees that the FPPC must track to see whether they have met their filing requirements, and questioned the expedience of using staff resources to track committees which have had no activity for a number of years. She added that different sets of campaign finance rules present an issue with § 85316. By requiring that committees be terminated, eventually all committees will be operating under one set of rules.

Chairman Getman motioned that the Commission proceed with a regulation that would terminate pre-Proposition 34 committees. Committees for people who are no longer in office would be terminated by the end of 2002, and committees for people who are currently in office would have to be terminated a number of months (to be later determined) after leaving their current office.

The motion was seconded by Commissioner Downey.

Chairman Getman did not have a recommendation for the number of months after leaving office that the committee would have to be terminated. She did not know that enough information was available at this point to make that decision.

In response to a question, Ms. Armstrong stated that the deadline of December 31, 2002 was proposed by staff after receiving little guidance from the regulated community, and that staff would welcome input.

Chairman Getman pointed out that the deadline of 12/31/02 applied only to those pre-Proposition 34 committees formed for persons who were no longer in office, and that those committees may apply to the FPPC Executive Director for an extension. The Executive Director may approve those requests provided the committee is making good-faith efforts to resolve any outstanding issues.

In response to a question, Chairman Getman pointed out that the regulation has a provision for administrative termination of committees by the FPPC, if the committees are no longer active and staff is unable to locate anyone associated with the committee.

Ms. Wardlow noted that committees who are still filing reports would be easy to find. She did not know that there were many committees which were not terminated and were not filing. She clarified that, even if there is no activity in a committee, it still must file a semi-annual report.

Commissioner Swanson stated that the 12/31/02 deadline would be better if changed to an earlier date.

Ms. Wardlow responded that the regulation will probably not be adopted until October, 2001, and that it will likely be January or February of next year before the committees are located and notified. She suggested that the Commission needed to give the committees enough time to spend surplus money or clear up outstanding debts.

In response to a question, Ms. Wardlow explained that a committee can be terminated with debt. When filing for termination, the candidate certifies that they have no intention or ability to pay off the debt. She noted that very often the debt is a personal loan from the candidate.

In response to a question, Chairman Getman stated that the Commission needed more input about the effect termination of a committee would have on third party vendors when debts are still outstanding. She pointed out that the supplemental materials outlined the federal system for terminating committees and dealing with debt, and noted that it is an elaborate system. She noted that it is important to find reasonable ways to allow committees to terminate with debt but without interfering with a vendor who has a legitimate dispute with the committee. She asked that the Commission give staff more time to try to resolve the debt issue.

Ms. Wardlow suggested that staff research and develop a list of the types of debts involved in the issue.

Chairman Getman added that staff would be working with political consultants and committee treasurers to learn how a committee ends up with debt, what that debt is likely to be, who the vendors contract with, etc.

Ms. Menchaca stated that once staff notifies all of the committees that they are aware of, they would meet the requirements of the regulation. She believed that the 12/31/02 deadline would work.

Chairman Getman restated the motion to require termination of pre-Proposition 34 committees for those whose candidates are not in office by the end of December, 2002, and to require termination of pre-Proposition 34 committees for those who are currently in office by a period of months (to be later determined) after they leave office.

There was no objection from the Commission.

Decisions 3 and 4

Ms. Armstrong explained that proposed regulation 18404.1(b)(1) regulates termination of post-Proposition 34 committees for candidates with no debts. The proposed regulation would require that the successful candidate terminate the committee within a time frame to be determined after the date the candidate leaves office or at the end of the term of office.

In response to a question, Ms. Armstrong explained that "end of the term of office" will be defined depending on what the Commission decides to do with the redesignation issue. If redesignation is not allowed, a new committee would be required for reelection to the same office so the "end of the term of office" would be the end of the first term. She added that there would be overlapping committees when a reelection committee has formed for the next term of the same office and the committee for the preceeding term has not yet been terminated.

Ms. Armstrong stated that the unsuccessful candidate committee without debt would be terminated after the general election or the special runoff election.

Ms. Armstrong explained the proposed regulation 18404.1(b)(2) regulates the successful candidate whose controlled committee has net debts outstanding as defined in proposed regulation 18531.6. The proposal would require that the committee be terminated after the date the candidate leaves office or the end of the term. It also provides that the unsuccessful candidate's committee would terminate after the general election or the special runoff election.

Mr. Hallabrin commented that audits required after each election under the PRA should be considered in terms of the timelines committees are allowed to stay open. He noted that future audit costs should be considered.

Jerry Nottelson, from Franchise Tax Board, stated that there is a time lag between the termination of committees and possible audits. When that occurs, sometimes the committee terminates and destroys their records. He noted that the statute provides that an audit must be completed within four years after an election. They usually start an audit within two years after the election.

Mr. Russo stated that Enforcement Division can present an enforcement case against a terminated committee and its treasurer when FTB notifies staff of a possible violation three years after the fact.

In response to a question, Chairman Getman stated that the Commission could require termination at some point after a committee has served its usefulness, but that if redesignation is allowed, the committee could continue to stay open until the candidate is no longer in that elective office or has left politics. In an unsuccessful election, the committee could be terminated earlier, but the regulation would have to be tailored to those contingencies.

Ms. Armstrong stated that redesignation systems do not allow redesignation from one office to another. She stated that staff could draft language providing different options.

Chairman Getman asked whether the Commission is willing to approve, in concept, the notion requiring termination of committees after their useful life.

There was no objection from the Commission.

Ms. Armstrong explained that proposed regulation 18404.1(c) would require that when the committee is terminated, the bank account must be closed, contributions cannot be accepted and expenditures cannot be made.

Decision 5

Ms. Armstrong stated that proposed regulation 18404(d) provides that a successful candidate for state office must terminate any local candidate committee after a period of time to be determined at a later date.

Chairman Getman noted that this will ensure that candidates cannot raise unlimited funds into a local committee and then transfer that money to a Proposition 34 regulated committee.

Mr. Hallabrin questioned whether this regulation would apply to local committees for past elections. If a committee was opened for a future election, he suggested that there might be constitutional problems if that committee was required to terminate.

Chairman Getman clarified that the regulation pertained to past committees.

Ms. Menchaca agreed.

There was no objection from the Commission to requiring termination of old local committees when the official assumes a state office.

Ms. Armstrong explained that proposed regulation 18404.1(e) was a safety valve which would allow candidates to apply for and receive an exemption or extension of time during which they can continue fundraising or complete litigation, upon a specific showing to the Executive Director of the justification. She noted that staff tried to make the regulation specific, while still allowing for a showing of good cause at the discretion of the Executive Director.

Commissioner Swanson questioned whether there should be an appeal procedure.

Ms. Armstrong responded that the decision can be taken directly to the courts. The Commission could provide that the decision may be appealed to the Commission before it goes to the court.

Chairman Getman stated that other provisions in the Act allow the Executive Director to make decisions with respect to extensions of time or exemptions that are appealed to the Chairman. She suggested that staff prepare some options for appeal.

Chairman Getman suggested that the word "exemption" be changed to "extension" to more properly reflect the Commission's intent.

Commissioner Downey supported subsection (e), but noted that it did not allow the Executive Director the discretion to approve less than a 6-month extension, and did not allow the applicant to seek an extension for a time other than 6 months.

Ms. Armstrong responded that the idea was to make it more of a rote process so that it would be easier for the Executive Director.

Chairman Getman suggested that the wording be changed to "up to a period of 6 months," noting that if someone came back for a second or third extension, the Executive Director might want to be able to limit the additional extension.

Ms. Menchaca stated staff hoped to bring this issue back to the Commission, with the redesignation issue, in October.

Chairman Getman urged the public to provide input regarding the termination of committees, particularly with debt settlement issues.

Trudy Schafer, with the League of Women Voters of California, supported the idea of termination of committees, and asked how debts that are written off would be treated in terms of contributions.

Chairman Getman noted that the federal safeguards limit the ability to manipulate the contribution limits by using debts, and that staff would be looking at those safeguards.

Item #5. Proposition 34 Regulations: Pre-notice Discussion of Proposed Regulation 18540, Allocation of Expenditures Subject to Voluntary Expenditure Ceilings (Section 85400).

Senior Commission Counsel Larry Woodlock presented proposed regulation 18540, dealing with the allocation of campaign expenditures to particular elections. He noted that campaign expenditures already have to be reported, but that § 85400 now requires that statewide candidates and candidates for statewide elective office who accept contribution limits have to determine how to assign campaign expenditures to certain elections.

Decision Point 1

Mr. Woodlock explained that option A is modeled after a corresponding federal regulation, which is used to allocate campaign expenditures in presidential races for purposes of the presidential expenditure limits. The regulation identifies six classes of campaign expenditures, and a default rule for those expenditures that do not fit into one of the six classes.

Option B, Mr. Woodlock stated, has the opposite approach. This would be a "bright line" test, providing that the expenditure will be attributed to the election held on that day or immediately thereafter. This rule would lead to some misallocations, and Mr. Woodlock presented sub-options which would allow the Commission to adopt exceptions to the rule.

Chairman Getman stated that staff recommended option A because it would give more guidance on how to allocate expenditures.

Mr. Woodlock agreed, noting that Technical Assistance Division strongly favored option A.

There was no objection from the Commission to favoring option A.

Chairman Getman asked whether the sub-options should include language stating that expenditures that are not described in (a) through (f) shall be allocated to the election for which they were incurred. She described a hypothetical situation wherein an expenditure may be made for a service that would be provided for both the primary and general elections, but the current proposed wording would allocate all of the expenditure to the primary election.

Mr. Woodlock agreed, noting that if the Commission was going to adopt any kind of finite rules, those rules will cause some misallocations when there are such a variety of campaign practices. He stated that staff was trying to eliminate the most obvious kinds of

misallocations while giving the candidates and treasurers some certainty with allocations. He noted that Chairman Getman's suggestion might give treasurers discretion, but could result in the filer having to explain the reasoning behind that discretionary decision to a judge if it resulted in an enforcement action.

Chairman Getman did not agree that it would give treasurers discretion because the language she proposed would require allocation to the election for which the expenditure was incurred.

Mr. Woodlock responded that the purpose of the rule is to tell the candidates which election an expenditure is incurred for, and that this would be contrary to the way other rules are worded. He believed that this would put an extra burden on the person making the decision.

Ms. Menchaca noted that the goal is to ensure that misallocations do not occur.

Chairman Getman responded that the current proposed language does not allow the filer to change the allocation if the rules result in a misallocation.

Ms. Menchaca suggested that language be drafted referring to misallocation but requiring some demonstration of the misallocation. She agreed that it could add an additional burden on the filer, but thought it would rarely happen.

Chairman Getman questioned whether the basic concept was to develop a system that would allocate the expenditures to the right election. She suggested that the default should be to allocate the monies to the proper election. If the rule does not allow the money to be allocated correctly, then her proposal would allow the money to be allocated correctly.

Commissioner Downey questioned which election the expenditure would be allocated to if a consultant was hired to help with two elections under Chairman Getman's proposal.

Chairman Getman responded that half of the expenditure would be allocated to each election.

Ms. Menchaca noted that this would be a mixed purpose expenditure and that the language of item 3 refers to "the election for which the expenses were incurred." "Incurred" would have to be defined. She suggested that staff use a different word.

Chairman Getman stated that her main concern was that the regulation should provide for accuracy in the filings.

Mr. Woodlock stated that staff could prepare an option as suggested by Chairman Getman, but noted his concern that a candidate who decides to allocate the expenditure contrary to the other rules in the regulation may be subject to an enforcement action. He suggested that the rules could be adjusted once the misallocations have been identified.

He asked for clarification of the Chairman's request so that he could prepare options for consideration, suggesting that a proviso with language providing that if a misallocation were apparent under any of the preceding rules the expenditure may be allocated otherwise.

Ms. Menchaca suggested that both a general statement and a proviso be developed.

Chairman Getman agreed, noting that if staff could convince her that this would not be a problem she would reconsider her concern. She stated that the underlying principal should be accuracy.

Mr. Woodlock responded that there are two underlying principals. The first is to provide rules helping candidates comply with § 85400. The second, and equally important, concern is that the regulation mirror reality.

Chairman Getman suggested that accuracy may be more important.

In response to a question, Mr. Woodlock explained that when an expenditure is made is often determined by the nature of the expenditure.

Commissioner Knox responded that a media contract under option A would be considered an expenditure when the committee buys air time.

Chairman Getman noted that there is a difference between when an expenditure is reported and when it is made, and that it is built into the regulation.

Commissioner Knox pointed out that the proposed regulation provides that the date the expenditures were made, except for media purchases, determines the election for which the allocation was made. He noted that, if a bill arrives after an election the expenditure would be allocated to the next election.

Ms. Wardlow clarified that the statute states that an expenditure is made on the date that a payment is made or the date the goods or services are received, whichever is earlier. She noted that it must be reported when it becomes an expenditure. The expenditure can be made and reported before the payment is made, if the goods have been received.

Decision 2

Mr. Woodlock explained that the Commission may choose to make explicit that non-monetary contributions are treated as campaign expenditures for purposes of § 85400. They are currently treated, for reporting purposes, as expenditures on the day of receipt of the contribution. He believed that it was important for purposes of the voluntary contribution ceilings to treat non-monetary contributions as expenditures. Since this important rule does cause some confusion with the public, staff believed that it should be expressly stated in the regulation.

There was no objection from the Commission to the staff recommendation.

Decision 3

Mr. Woodlock explained that the Commission may choose to create a third subdivision in the regulation expressly stating which expenditures do not count as campaign expenditures for purposes of § 85400. He noted that Technical Assistance Division supports this notion because it might eliminate a lot of uncertainty.

There was no objection from the Commission.

Commissioner Swanson left the meeting at 2:40.

Item #6. Major Donor Program – Streamlined Procedure.

Chief Investigator Al Herndon introduced the two discussion items. He explained that the Major Donor Program began in September 1999 under the direction of the Commission for the purpose of identifying major donors and identifying those major donors who had not filed major donor campaign statements. At the June 2000 meeting, staff presented their proposed major donor program, which allowed staff to not only identify those major donors who had not filed campaign statements, but would also allow staff to identify them before the filing date. Staff was then able to develop a procedure which would notify the major donors of their filing obligations as a courtesy reminder. The Commission approved a two-part prosecution policy for the major donors at the December 2000 Commission meeting, creating a streamlined procedure for prosecution and adopting a fine policy for those violations.

Mr. Herndon reported that since then, staff had brought 62 streamlined major donor settlements to the Commission. Now that the 2000 election year is complete, staff was bringing the matter back to the Commission for review.

Mr. Herndon recognized and commended Mr. Wroten on the development and implementation of the major donor program.

Mr. Wroten explained that the first step of the major donor program involved working with the Secretary of State's (SOS) office developing a database of electronic filings. They identified 1814 individual contribution records totaling $58,911,296.13 in contributions that were received from contributors of $2,500 or more.

The second step required that staff sort and organize the raw data by contributor to identify those contributors of $10,000 or more during a calendar year, the threshold required to be identified as a major donor. There were 780 major donors identified.

Step 3 involved working with Technical Assistance Division to contact those 780 major donors in writing to alert them 30 days prior to their filing obligations of the filing

obligation, explaining why they were identified as major donors and identifying resources they could use for additional help.

Step 4 involved identifying those persons who subsequently did or did not meet their filing obligations. Of the 780 identified major donors, 623 had timely filed their committee statements.

Step 5 involved a contact from the Enforcement Division to the remaining 157 potential non-filers. A letter was sent to each of them, recapping their legal obligation to file and including a questionnaire for them to fill out to advise Enforcement Division of any possible mistakes staff might have made. Through the questionnaire, staff learned that 80 of the individuals had either filed, or were not required to file.

Step 6 involved monitoring the remaining 77 non-filers to confirm that they did file the forms. Of those, 42 persons subsequently filed, and were fined under the Tier 1 fine schedule for failure to file after being contacted by Enforcement Division. This resulted in $17,600 in penalties being assessed. The 35 remaining non-filers were sent a second letter by Enforcement Division through certified mail. This resulted in 19 individuals filing, and they were each fined in accordance with the Tier 2 penalty schedule. This resulted in $11,400 in penalties being assessed and collected. There was one Tier 3 violation, resulting in a maximum fine of $2,000.

Step 7 involved 15 remaining cases which are being pursued as full investigations by Enforcement staff. Enforcement staff determined that those cases needed full investigation because: (1) information existed leading staff to believe that there may be additional or more serious violations of the PRA, (2) the size or nature of the contributions did not fit within the streamlined program, (3) the respondent requested that a Probable Cause hearing be held, or (4) the major donor never responded to any of the contacts by Enforcement Division.

In response to a question, Mr. Wroten stated that he learned that the initial identification and contact is a critical step, because it seemed to have a significant impact on the voluntary filing requirements. He also believed that the program had a positive effect on voluntary compliance.

In response to a question, Mr. Russo stated that one of the benefits of this program is that staff lowered considerably the number of contacts that are made by Enforcement Division while increasing compliance.

In response to a question, Mr. Russo noted that this process does not involve an Enforcement Division attorney unless a case may not fit the criteria for the streamlined process and the Chief of Enforcement determines that the case should not be included in the streamlined process. The case is then assigned to a staff attorney.

Mr. Wroten outlined the highlights of the program. He noted that there was substantial public education which he believed was very beneficial. It differed from typical written correspondence a contributor receives from a committee.

Mr. Wroten explained that there was an 85% reduction in identified violations from the first to the second semi-annual reporting periods, he believed as a result of the contacts made by staff through this program. The number of actual violations was reduced by 56% in that period. He noted that there were over $3,000,000 in contributions that were identified and disclosed by the major donors, which may not have been otherwise disclosed to the public and that the program allowed for swift enforcement action.

Chairman Getman stated that, by the end of the day's meeting, staff would be finished with all the major donor violations for the year 2000, except for those cases requiring full investigation.

In response to a question, Mr. Wroten explained that recipient committees must send a letter to anyone contributing $5,000 or more to the committee that they may have to file as a major donor. He noted that a person who makes several contributions of $3,000 would not receive a letter from the committee, but would be contacted by FPPC staff.

In response to a question, Mr. Russo stated that he did not see any need at this point for the committees to notify contributors of possible major donor status at a lower level of contributions.

Mr. Wroten concluded that staff initiated, investigated and settled cases within 11 months of the occurrence of the first violation. Total penalties of $31,000 were assessed and collected, and 15 proactive investigations of more serious violations were initiated.

Chairman Getman congratulated staff on the wonderful results, noting that staff came up with the idea, and implemented the program successfully and quickly achieving terrific results.

Commissioner Downey echoed the sentiment.

Item #7. Consideration of Revisions to Enforcement Policy.

Mr. Russo stated that the major donor program was very successful, but noted that staff was presenting a review for the Commission to use to determine whether the fine structure should be changed.

Decision 1: The Basic Penalty

Mr. Russo explained that the penalty structure currently has a three-tiered approach based on how quickly the respondent files the major donor statement upon being contacted by the Enforcement Division. If the respondent files immediately upon receiving the contact, the penalty would be $400. If the respondent must be contacted a second time,

then files immediately, the fine would be $600. If neither contact results in compliance, the person would be fined 15% of the contribution not reported by the major donor.

Mr. Russo stated that option 3 offered the most drastic change to the program because it provides that the fines be increased by 150%. That amount reflects the change in the maximum penalty that can be imposed brought about by Proposition 34. Tier 1 violations would be fined $1,000, Tier 2 violations would be fined $1,500, and Tier 3 would remain the same, but would have an increased cap of $5,000.

Mr. Russo suggested that this approach might discourage participation in the program. He pointed out that this approach would also send a message that the Commission now considers major donor violations among the most serious of the violations.

Commissioner Scott stated her concern that the Commission always reduces the fines when cases are brought to the Commission. She suggested that the Commission impose higher fines. She questioned why it would be in the respondent's interest to not participate in the streamlined program.

Mr. Russo explained that staff was trying to create consistency in the program. A higher fine might encourage respondents to fight the matter because it could be worthwhile to them to incur the legal fees or to drag the process out, leaving no incentive to settle the matter.

Commissioner Scott responded that she would agree if the fine were $50,000, but that a fine of $2,000 versus $1,000 would not make a difference. If a person knows that the penalty is low, they may not file, and the Commission should be trying to induce people to file.

Chairman Getman pointed out that the program did work to induce major donors to file, and resulted in much greater compliance in the general election than in the primary election.

Commissioner Scott agreed that there was greater compliance, but still thought the fines were too low. She suggested that enforcement staff be given more flexibility by providing higher fines, and adding a percentage amount to the fine.

Mr. Russo responded that option 3 gives the Commission the ability to greatly increase the penalties.

Mr. Russo explained that staff recommended option 2. It would increase the fines for Tier 1 violations to $500. Tier 2 violations would be increased to $1,000, and Tier 3 violations would remain the same. Staff believed this was the best option because the program seems to work quite well, but a fine adjustment did seem appropriate. Since the program had been in effect for some time and it was now known in the regulated community that the FPPC would be prosecuting major donor violations, he believed that

it might be a good time to increase the fines. Staff thought that it would be better to place a higher increase in the fines for the tier 2 violators.

Commissioner Downey stated that he did not see the need to raise the fines, as presented in option 3. He agreed that the $600 current fine for Tier 2 violators seemed a little low. He suggested that Tier 1 fines be kept at $400 because those violations often involve innocent excuses for not filing. Tier 2 could be increased to $800.

Chairman Getman stated that Enforcement Division has done a remarkably good job and believed that the Commission should defer to their judgement.

Commissioner Knox supported Commissioner Downey's proposal.

Commissioner Downey motioned that the Tier 1 violation fine be kept at $400, the Tier 2 violation fine be increased to $800, that staff keep their prosecutorial discretion and that Tier 3 would remain a fine of 15% of the amount contributed up to the new statutory maximum of $5,000.

Commissioner Knox seconded the motion.

Commissioners Downey,Knox and Chairman Getman voted "aye." Commissioner Scott voted "no." The motion carried by a vote of 3-1.

Decision 2: Penalty Enhancement

Mr. Russo explained that this option would allow the commission to impose additional fines when the major donor violations for contributions were high, or the number of contributions was unusually large. Staff has tried to tie the contribution activity with the amount of the penalty in this decision.

Mr. Russo explained that option 1 would keep the fine schedule as it currently is. He stated that option 3 would allow for a graduated fine schedule for all major donor violators, providing an enhanced penalty of 1% of the total unreported contributions.

Mr. Russo noted that staff recommended option 2. It would provide the 1% enhanced penalty, but it would only apply to donors of $50,000 or more.

Commissioner Scott suggested that option 2 be changed to allow staff to decide when the number of unreported contributions would seem egregious, rather than setting the number at ten.

Mr. Russo explained that the program already allows enforcement staff the discretion to take a case out of the program if they believe it to be appropriate.

Commissioner Scott explained that there may be cases that go over the limit that staff believes should be included in the streamlined program, and that staff should have the flexibility to process those cases through the streamlined program.

Mr. Russo stated that the intent of the program was to set a standardized and consistent approach. Discretionary cases should only be the really significant ones. He noted that staff has been criticized for processing cases slowly, and that the streamlined program allows staff to complete a case quickly.

Commissioner Downey motioned that the Commission adopt the staff recommendation.

Commissioner Knox seconded the motion.

Commissioners Downy, Knox, and Chairman Getman voted "aye." Commissioner Scott voted "nay." The motion carried by a vote of 3-1.

Decision 3: Criteria For Exclusion from the Streamlined Major Donor Program

Mr. Russo explained that the penalty structure of the current program provides that, if a person came through the program a second time, there would be standardized penalty of 25% of the unreported contributions. He noted that staff has not yet had this situation arise.

Mr. Russo asked that the Commission reaffirm that the Enforcement Division has discretion to exclude people from the program. He noted that the memorandum included a list of criteria staff would use to make the determinations. He explained that staff intended to exclude those people from participation in the program unless it appears that a problem exists, in which case staff would try to include them in the streamlined program but would note that for the Commissioners and would ask for a higher penalty. That penalty would be determined at that time, and not through a schedule.

Commissioner Scott stated that she did not want a respondent to be entitled to participate in the streamlined program and asked that staff phrase it in a way that allows staff to decide whether a case belongs in the program.

Mr. Russo agreed.

Commissioner Downey motioned that the Commission reaffirm its previous grant of discretion to the Enforcement Division to exclude cases from the streamlined program and adopt the criteria enumerated in the staff memo for excluding those cases.

Chairman Getman seconded the motion.

Commissioners Scott, Downey, Knox and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Item #8. In the Matter of Rob Guzman and Rob Guzman for State Senate, FPPC No. 00/620. (3 counts).

Commissioner Scott recused herself from this item.

There being no objection, this item was approved by a vote of 3-0.

Items #9, #10, #11

There being no objection, the following items were approved on the consent calendar:

Item #9. In the Matter of the Freedom and Free Enterprise PAC and Thomas P. Kemp, Treasurer, FPPC No. 99/415. (3 counts).
Item #10. ***In the matter of Charles Paul, FPPC No. 01/132.*** (1 count.)
Item #11. Failure to Timely File Major Donor Campaign Statement – Streamlined Procedure.
a. ***In the Matter of Edgewood Lane Developers, LP, FPPC No. 2001-322***. (1 count.)

Items #12 and #14.

There being no objection, the following items were taken under advisement:

Item #12. Legislative Report.
Item #14. Litigation Report.

Item #13. Executive Director's Report.

In response to a question Ms. Wardlow stated that she was not sure why the Legislature set up a system whereby conflict of interest codes were set up by separate bodies while they still had to comply with the FPPC's conflict of interest code requirements. She believed that there was a provision in the Act providing that the process should be done at the most decentralized level. Several years ago the Commission developed a model conflict of interest code and put it into regulation 18730. The Commission required that those agencies for which the FPPC is the code reviewing body incorporate that code by reference as their code, and attach their list of designated employees to that code. When a change is required in the conflict of interest code, the regulation is amended by the Commission, and every conflict of interest code that incorporates that code is automatically amended. Staff mails a copy of the amended code to every agency that has incorporated the code.

In response to a question, Mr. Krausse stated that he returns a copy of the conflict of interest code to the requestor, and a copy is kept at the FPPC offices when the FPPC is the code reviewing body. Those codes are available to the public. The Public Education Unit has been envisioned as the repository for those codes.

Chairman Getman stated that staff was already working on collecting those codes for which the FPPC is not the code reviewing body and would like to make all of the codes available on the internet.

Mr. Krausse noted that the conflict of interest codes that the FPPC already has will be made available on the internet first.

In response to questions, Ms. Wardlow explained that the FPPC is the filing officer for Statements of Economic Interests for all officials listed in government code § 87200 and that most multi-county agencies are allowed to be their own filing officers. She stated that the Legislature notifies staff when new agencies are created, and that a similar process is being developed with the Governor's office, in order to ensure that conflict of interest codes are developed. The statute requires that the code reviewing body send out a notice every other year requiring that the agency advise the code reviewing body as to whether their code is up-to-date.

In response to a question, Mr. Krausse stated that newly created short-term commissions, such as the McPherson Commission, are treated on a case-by-case basis, and the regulations include an exception for commissions that are soon to expire.

Commissioner Scott requested that staff brief the Commission at the September Commission meeting about the FPPC's role in conflicts of interest, including an explanation of what the FPPC reviews, due dates, notification of due dates, and anything that would provide an explanation of the FPPC's role.

The meeting adjourned at 3:45 p.m.

Dated: September 10, 2001

Respectfully submitted,

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Sandra A. Johnson
Executive Secretary

Approved by:

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Chairman Getman